

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23342
W/kmg

_____AD3d_____

Argued - April 20, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-10079

DECISION & ORDER

Thomas Poole, appellant, v Jane
Ogiejko, respondent, et al., defendant.

(Index No. 9259/06)

Kujawski & Dellicarpini, Deer Park, N.Y. (Mark C. Kujawski of counsel), for
appellant.

Loccisano & Larkin, Hauppauge, N.Y. (Erica L. Ingebretsen of counsel), for
respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Suffolk County (Costello, J.) dated October 7, 2008, which granted the
motion of the defendant Jane Ogiejko for summary judgment dismissing the complaint insofar as
asserted against her.

ORDERED that the order is affirmed, without costs or disbursements.

The plaintiff was injured when a Bobcat “Skid-Steer” loader operated by the defendant
Charles Coperhaver drove over his foot. At the time of the accident, the plaintiff was assisting
Coperhaver in removing bushes outside of a residence owned by the defendant Jane Ogiejko. The
plaintiff and Coperhaver, who lived at the residence, volunteered to remove the bushes for Ogiejko.
Coperhaver borrowed the loader from his cousin. Ogiejko was not present when the work was being
performed, and was at her job when the accident occurred. All parties testified at their depositions
that Ogiejko neither directed how the work was to be performed, nor supervised any part of the
work.

May 26, 2009

POOLE v OGIEJKO

Page 1.

A landowner has a duty to keep his or her land in a reasonably safe condition (*see Sheridan v Grigos*, 277 AD2d 217, 218). Here, the injuries were not caused by an unsafe condition on the property, but were rather a direct result of the voluntary actions that the plaintiff undertook to remove the bushes (*see Captanian v Schramm*, 33 AD3d 834). The law imposed no duty upon Ogiejko to protect the plaintiff from the unfortunate consequences of his actions (*see Mattes v Joseph*, 282 AD2d 506).

Contrary to the plaintiff's contentions, Coperhaver was not acting as an agent of Ogiejko, as the testimony of all the parties established that Ogiejko did not supervise or control the work performed (*see Fils-Aime v Ryder TRS, Inc.*, 40 AD3d 917, 918). Ogiejko thus met her burden of establishing her entitlement to judgment as a matter of law. In opposition to Ogiejko's showing in this regard, the plaintiff failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, Ogiejko was properly awarded summary judgment dismissing the complaint insofar as asserted against her.

FISHER, J.P., COVELLO, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court